

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of: Larry & Dottie Moore)
Dist. D01, Block 29, Parcel 00362) Shelby County
Residential Property)
Tax Years 2002 – 2004)

FINAL DECISION AND ORDER

Statement of the Case

The taxpayer has appealed the initial decision and order of the administrative judge. The administrative judge determined that there was no "reasonable cause" for the failure by the taxpayer to properly appeal the 2004 assessment and that the appeal filing deadlines for tax years 2002 and 2003 had expired. The administrative judge dismissed the appeal by the taxpayer for lack of jurisdiction and determined the following assessments should remain in effect for tax years 2002 through 2004:

<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
2002	\$57,500	\$181,000	\$238,500	\$59,625
2003	\$48,500	\$181,300	\$229,800	\$57,450
2004	\$48,500	\$147,200	\$195,700	\$48,925

The appeal was heard in Memphis on May 24, 2006 before Commission members Thomas Brooks (senior member and presiding Chair) and James Wade. Kelsie Jones sat as designated alternate and administrative judge. Mr. and Mrs. Moore represented themselves. Appearing on behalf of the assessor were Attorney John Zelinka, Elizabeth Triplett, and Deputy Assessor Charles Blow. Assessor Rita Clark was also present.

Findings of Fact and Conclusions of Law

The subject property is a residence located at 6728 Salem Road on a 6.99 acre tract. The subject property was originally purchased in 1998 for use as farmland. However, after an accident left Mr. Moore a quadriplegic, the taxpayers began construction on a home that would accommodate Mr. Moore. The taxpayers moved into the house on April 6, 2001. The taxpayers testified that, with the exception of an upstairs game room, the house was complete. In 2001, the assessor appraised the subject property for \$251,900. The taxpayers appealed to the Shelby County Board of Equalization during its 2001 session and the appraisal was reduced to \$165,100. The taxpayers testified that they never received any notices regarding changes in the appraisals for subsequent tax years. Not having received any notices to the contrary, the taxpayers stated that they thought the property appraisal value remained at \$165,100.

Since they did not receive any tax bills, the taxpayers testified that they paid their taxes at the county satellite office located at the Arlington City Hall when they knew taxes were due. The taxpayers testified that they paid whatever amount the tax official told them was due. It was when they went to pay their 2004 taxes that the taxpayers were told they were "severely delinquent" in the amounts that had been paid for 2003 and 2004 tax years. The taxpayers testified that they were told the appraisal values were as follows:

<u>Tax Year</u>	<u>Total Appraisal Value</u>
2002	\$238,500
2003	\$229,800
2004	\$229,800

The taxpayers paid all that was owed. At this hearing, the taxpayers stated that they are not disputing the values for 2001 and 2004 tax years. They are disputing the values for tax years 2002 and 2003. The taxpayers argued that, if the values cannot be changed, they sought the waiver of the penalties and interest for those tax years.

The county representatives testified regarding the valuation history of the subject property. The testimony was that 2002 was the first full-year assessment. In 2003, the value dropped slightly due to a land adjustment. The value for 2004 was reduced to \$195,700 based upon comparable sales. For tax year 2005, there was an issue with the number of square feet and the acreage. The result was that the total appraisal value for 2005 was \$238,600. The local board reduced it to \$195,600. Consequently, the taxpayers are seeking a refund for tax year 2005. Based on a new addition, the total value for 2006 is \$221,500. Regarding whether there may have been any errors in the 2002 and 2003 values, the county testified that the number of square feet for the residence seems to have been incorrect for 2002 and 2003. The county stated the values for 2002 and 2003 should also be \$195,700.

The county testified that it had the following address for the taxpayers for 2004 and 2005: "6728 Salem Road, Arlington, TN 38002". The taxpayers testified that this is their correct address. At the hearing, the county only had copies of the notices that were sent to the "tax collectors". A recess was called to give the county the opportunity to produce copies of the assessment change notices sent to the taxpayers. The county did not find a record of any change of value notices being mailed to taxpayers for 2002 or 2003.

The jurisdiction of the State Board of Equalization is primarily governed by Tenn. Code Ann. § 67-5-1412(e). This statute gives a taxpayer the right to a hearing to determine if reasonable cause existed to excuse the taxpayer's failure to meet the requirements for appeal. This statute requires that the taxpayer

request this hearing by March 1 of the year "subsequent to the year in which the assessment was made". As the administrative judge pointed out, the taxpayers in this case had until March 1, 2003 and March 1, 2004 to file appeals for tax years 2003 and 2004 respectively. The appeal by the taxpayers in this case was postmarked January 7, 2005. Therefore, as a general rule, the finding by the administrative judge was correct. However, in Appeal of Summer Trace Apartments (Assessment Appeals Commission, January 22, 1999), this Commission found that the legal sufficiency of notice must be considered in some jurisdictional inquiries.

Tennessee law states that the taxpayer must be notified of any change in classification or assessed valuation of the taxpayer's property. The relevant statute, Tenn. Code Ann. § 67-5-508(e), states the following:

In addition, at least ten (10) calendar days before the local board of equalization commences its annual session, the assessor or the assessor's deputy shall notify, or cause to be notified, each taxpayer of any change in the classification or assessed valuation of the taxpayer's property. Such notice shall be sent by United States mail, addressed to the last known address of the taxpayer, and shall be effective when mailed. The notification shall show the previous year's assessment and classification and the current year's assessment and classification.

In Summer Trace Apartments, this Commission noted that Tenn. 67-5-508 (a)(3) provides that notice is "effective when mailed" and that it must be sent to the "taxpayer's last known address". In that case, the notice was not sent to the last known address of the taxpayer. This Commission ruled that notice was legally insufficient and that the State Board had jurisdiction of the appeal.

Similarly, in this case, the legal sufficiency of notice is an issue. The testimony shows that no change of value notices were sent to the subject taxpayer for tax years 2002 and 2003. This failure to notify resulted in the taxpayer being denied due process. Therefore, like the appellant in Summer Trace Apartments, the subject taxpayer should be granted the right to appeal "directly to the State Board of Equalization at its next session after the taxpayer becomes aware or is properly notified of its assessment".

ORDER

By reason of the foregoing, it is ORDERED, that the initial decision and order of the administrative judge is reversed. Having jurisdiction of the appeal, the value is determined as follows:

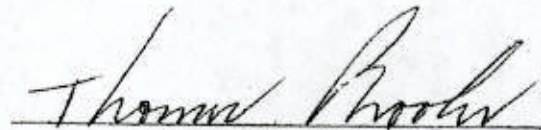
<u>Tax Year</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
2002	\$48,500	\$147,200	\$195,700	\$48,925
2003	\$48,500	\$147,200	\$195,700	\$48,925
2004	\$48,500	\$147,200	\$195,700	\$48,925

This order is subject to:

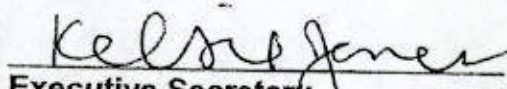
1. **Reconsideration by the Commission**, in the Commission's discretion.
Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.
2. **Review by the State Board of Equalization**, in the Board's discretion.
This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: July 21, 2003


Presiding Member

ATTEST:


Executive Secretary

cc: Mr. and Mrs. Larry Moore
Ms. Rita Clark, Shelby County Assessor of Property
Ms. Tameaka Stanton-Riley, Shelby County Appeals Manager

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of: SUMMER TRACE APARTMENTS
Personalty Acct. No. PPO-051 535
Commercial Property
Tax Years 1995-1996

Shelby
County

FINAL DECISION AND ORDER

Statement of the case

The taxpayer appealed to the State Board of Equalization for relief from "forced" tangible personal property assessments for tax years 1995 and 1996. The appeals were referred for initial hearing before an administrative judge sitting for the Board pursuant to Tenn. Code Ann. §67-5-1505, who rendered an initial decision and order recommending the appeals be dismissed for lack of jurisdiction. The taxpayer has asked the Assessment Appeals Commission to review the initial decision and order, and a hearing was convened in Memphis on September 15, 1998 before Commission members Isenberg (chairman), Crain, Ishie and Simpson, and a second staff administrative judge (Jones). The taxpayer was represented by his attorney, Mr. David Scruggs, and Mr. Thomas Williams, Assistant County Attorney, appeared on behalf of the assessor.

Findings of fact and conclusions of law

This appeal concerns business tangible personal property used in the operation of Summer Trace Apartments located at 6015 Summer Trace Drive in Memphis. In August of 1994 the apartments were sold by Summer Trace Apartments Company, a Georgia company, to Summer Trace Apartments, L.P., affiliated with Memphis based Loeb Properties, Inc. The new owner engaged Ledic Management to operate the property. Ledic manages at least a dozen other apartments in the Memphis area and routinely pays real and personal property taxes for properties it manages.

Although the deed transferring the real property of the apartments recited the new owner's name and address, the assessor continued to send the annual personal property reporting schedules and other assessment and tax notices to the old owner in Georgia. When the schedules were not returned the assessor created forced assessments against the old owner and sent assessment notices reflecting the forced assessments, but these too went to the old owner as did the eventual tax notices.

The delinquent taxes came to the attention of Ledic after the assessor's personal property department contacted the resident manager of the apartments in June of 1997. Ledic appealed the 1996 assessment to the State Board of Equalization in July and in November appealed the 1995 assessment just prior to the hearing on the 1996 assessment.

Tennessee law contains deadlines for review of property tax assessments which administrative officials have little if any discretion to waive. Where the business taxpayer fails to return the tangible personal property reporting schedule provided by the assessor, the assessor makes a forced assessment and sends notice by U. S. mail to the taxpayer's last known address at least five days before the county board of equalization begins its annual session. Tenn. Code Ann. §67-5-903 (c). If the taxpayer fails then to appeal the assessment to the county board prior to final adjournment of its annual session, the assessment becomes final. Tenn. Code Ann. §67-5-1401. The taxpayer who appeals to the county board may thereafter appeal further to the State Board of Equalization by August 1 or 45 days after the date of notice of the county board action. If notice of an assessment change was not sent at all, the taxpayer has until 45 days after the tax billing date for the assessment to file the state appeal. Tenn. Code Ann. §67-5-1412. In 1991 the legislature gave taxpayers a right to a hearing and determination on the question of whether reasonable cause existed to excuse the taxpayer's failure to meet the requirements for appeal, but the hearing must be requested by March 1 following the tax year. Tenn. Code Ann. §67-5-1412 (e).

The administrative judge determined that the March 1 deadline prevents the Board (or this Commission on behalf of the Board) from considering whether reasonable cause existed to excuse the late appeals in this case, and the assessor asks that we affirm this finding. As a general rule the judge's finding on this point is correct, i.e., the March 1 deadline does preclude consideration of "reasonable cause" under Tenn. Code Ann. §67-5-1412, and we have so held in three appeals heard and decided contemporaneously with this one (*Appeal of A F Enterprises; Appeal of Consolidated Realty Company; Appeal of Autumn Investment Company*). According to a ruling of the state Attorney General, however, the question of "reasonable cause" does not end our jurisdictional inquiry where it is alleged

that notice was legally insufficient. Opinion of the Attorney General No. 92-62.

Notice is not, of course, legally insufficient merely because it was not received. Section 67-5-508 (a)(3) provides that notice is "effective when mailed" and the forced assessment statute requires only that notice be *sent* to the taxpayer's last known address. Notice in this instance, however, was insufficient because it was not sent to the taxpayer's last known address. The assessor had evidence of the new owner of the property involved in this appeal on the face of the deed, and in fact the real property assessment records had been correctly changed. Assessors are expected to verify transactions indicated by recorded deeds (Tenn. Code Ann. §67-5-1601 (a)(4)), and to use real property ownership records as a means of discovering tangible personal property assessments (Rule 0600-5-.02 of the State Board of Equalization).

Since the assessor did not send notice of this assessment to the taxpayer's last known address, the taxpayer should be afforded the right to appeal directly to the State Board of Equalization at its next session after the taxpayer becomes aware or is properly notified of its assessment.

Ms. Simpson dissents (Attachment A).

ORDER

By reason of the foregoing, it is ORDERED, that the initial decision and order of the administrative judge is reversed. Having jurisdiction of the appeal, and based on the parties' stipulation concerning the proper assessment, the assessment is determined as follows for tax years 1995 & 1996:

Tax Year	Appraisal	Assessment
1995	\$16,800	\$5,040
1996	\$14,300	\$4,290

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and

be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

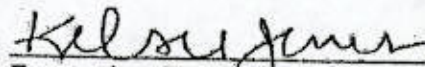
3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Jan. 22, 1999

Ron Isenberg by FMN
S/ Presiding member

ATTEST:


Executive Secretary

cc: Mr. David Scruggs, Esq.
Mr. Thomas Williams, Esq.
Ms. Rita Clark, Assessor

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of: SUMMER TRACE APARTMENTS
Personalty Acct. No. PPO-051535
Commercial Property
Tax Years 1995-1996

Shelby
County

DISSENT

The majority decision in this matter reaches an incorrect legal conclusion and is unsupported by the proof. The administrative judge correctly concluded that Tenn. Code Ann. §67-5-1412 imposes an absolute deadline for taxpayers to seek determinations of the sufficiency of notice, this being but one element of "reasonable cause". The statute provides that even when the assessor *entirely omits* to send notice of an assessment change, the taxpayer still must appeal within 45 days from the tax billing date for the jurisdiction. It is not unreasonable to expect taxpayers to know they owe some tax and to expect them to inquire when they fail to receive the annual bill, and that is all the statute requires.

Even if the majority is correct in ignoring the "reasonable cause" deadline, it should have found the notice in this case was legally sufficient. Notice is sufficient when sent to the taxpayer's last known address, and it is not unreasonable to expect new owners of businesses in the county to notify the assessor that they have begun to operate in Shelby County. The owner in this case hired a knowledgeable manager who knew very well that personal property taxes were due and who was familiar with reporting of that property.

For the reasons expressed I would affirm the administrative judge, and I respectfully dissent.

DATED: Jan. 22, 1999.

S/ Dare Simipson by KJ